

Translation

PATENT COOPERATION TREATY

526187

PCT/ES2003/000443



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference AN-1009	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/ES2003/000443	International filing date (<i>day/month/year</i>) 02 September 2003 (02.09.2003)	Priority date (<i>day/month/year</i>) 02 September 2002 (02.09.2002)
International Patent Classification (IPC) or national classification and IPC A61C 8/00		
Applicant ANITUA ALDECOA, Eduardo		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 7 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 14 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☒ Certain defects in the international application
- VIII ☒ Certain observations on the international application

Date of submission of the demand 22 January 2004 (22.01.2004)	Date of completion of this report 01 December 2004 (01.12.2004)
Name and mailing address of the IPEA/ES	Authorized officer
Facsimile No.	Telephone No.

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International application No.

PCT/ES2003/000443

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages _____, as originally filed
pages _____, filed with the demand
pages 1A, 1B, 2A, 3A, 3B, 4A, 4B, 5A, 6A, 9A, _____, filed with the letter of 13 February 2004 (13.02.2004)
- ☒ the claims:
pages _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages 7A, 8A, _____, filed with the letter of 13 February 2004 (13.02.2004)
- ☒ the drawings:
pages 3/4, 4/4 _____, as originally filed
pages _____, filed with the demand
pages 1/4A, 2/4A _____, filed with the letter of 13 February 2004 (13.02.2004)
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages 1-6, 9
- ☒ the claims, Nos. 1-6
- ☒ the drawings, sheets/fig 1/4, 2/4, fig 1-6

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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International application No.

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I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

This report is based on the amendments submitted to the International Preliminary Examining Authority with the letter of 13 February 2004, since it is considered that those amendments do not go beyond the disclosure as originally filed. Consequently, the report is based on the amended claims (PCT Rule 70.2(a)).

However, it should be noted that in the letter of 13 February 2004, in which amendments are made to the descriptions, claims and drawings, it is stated with reference to the drawings that:

- the original page 1/4A has been replaced by the new page 1/4A, and
- the original page 2/4A has been replaced by the new page 2/4A.

Since there is no page 1/4A or 2/4A in the original set of drawings and since the modified description still refers to figures 7A to 7E and 8, it is assumed that an error has been made regarding the drawings and that the intention was to replace the original pages 1/4 and 2/4 with the modified pages 1/4A and 2/4A, the original pages 3/4 and 4/4 being retained, the final set of drawings on which the report is based thus comprising pages 1/4A (amended), 2/4A (amended), 3/4 (original) and 4/4 (original).

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOX III.1.

Claim 6^a relates to subject matter which, in the opinion of this Authority, falls under PCT Rule 67.1(iv), concerning methods for treatment of the human or animal body by surgery or therapy, and diagnostic methods. Consequently, no expert opinion has been established in respect of the novelty, inventive step and industrial applicability of the subject matter of said claim (PCT Article 34(4)(a)(i)).

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1-5	YES
	Claims		NO
Inventive step (IS)	Claims	1-5	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-5	YES
	Claims		NO

2. Citations and explanations

The documents taken into consideration are those cited in the ISR, in particular:

Document	Publication or Identification Number	Publication Date
D1	US 2002094508 A	18/07/2002
D2	US 5944525 A	31/08/1999
D3	WO 0224102 A	28/03/2002

Document D1 is considered the closest prior art and relates to a rotary osteotome for widening a dental implant site in preparation for receiving a dental implant. The osteotome comprises a tapered body which widens from a tip to an intermediate region, with at least part of the tapered body being threaded. A coupling provides detachable engagement with a surgical drill or hand wrench for forward or reverse rotation of the osteotome. A kit of osteotomes of this type includes osteotomes of gradually increasing diameters.

However, the disclosure of document D1 does not appear to anticipate the features specified in claim 1 of the application, since D1 does not indicate that the set of instruments includes an extremely wide starting drill with

a quadrangular section and of shorter length and section than the osteotomes, or that the set of osteotomes includes connectors for motorised or manual actuation of the osteotomes.

Documents D2 and D3 are considered more remote and reflect the prior art.

None of the prior art documents shows a device such as described in claims 1 to 5 and they therefore cannot be considered relevant. In addition, it would not be obvious for a person skilled in the art proceeding from those documents to design a similar device with the features specified in the claims. Consequently, documents D1, D2 and D3 reflect simply prior art. The subject matter of claims 1 to 5 can thus be considered to meet the requirements for novelty, inventive step and industrial applicability of PCT Article 33(2), (3) and (4).

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VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Pursuant to PCT Rule 5.1(a)(ii) and in order to aid understanding of the invention, it is suggested that the description contain a reference to document D1, which reflects the prior art.

Said reference may not broaden the subject matter of the invention as originally filed.

Pursuant to PCT Rule 11.13(m), the same feature must be denoted by the same reference sign throughout the application. This requirement is not satisfied by the use of the reference sign (14, 16) in claim 1 (page 7A, line 22) to refer to the connectors, the correct reference being (14, 17).

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The use of the term "motorised" in the claims results in confusion and incongruity. The set of instruments (osteotomes, drills and connectors) is not motorised *per se*, but can be connected to a surgical motor. Claim 1 (page 7A, line 5), for example, states "these motorised osteotomes are designed for assembly with motorised or manually actuated connectors...". The osteotomes themselves are not motorised and, moreover, if they are assembled with manually actuated connectors then there is no motorization at all, which gives rise to incongruity (manually actuated motorised osteotome?).

All the claims begin with the preamble "Set of motorised instruments...", and therefore the confusion specified above applies to all the claims and, in particular, to claim 5^a, which contains further incongruity in that it indicates connection to a manually actuated ratchet wrench.

Consequently, in order to make the claims clearer (PCT Article 6), it would be desirable to remove the word "motorised" in relation to the set of instruments and to the osteotomes, or to replace it with a phrase such as "*manually actuated or motorised*". The same applies to the use of this term in the description, in order to increase the clarity thereof (PCT Article 5).